

THE TRIAL

OF

KENITH MACKENZIE, Esq.

FOR THE MURDER OF

KENITH MURRAY MACKENZIE,

At FORT MOREA, on the Coast of AFRICA,

On the Fourth of AUGUST, 1782:

Who was TRIED by a Special Commission at 1 JUSTICE HALL in the OLD BAILEY,

On FRIDAY the 10th of DECEMBER, 1784.

And received Sentence of Death.

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M DCC LXXXIV.

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BEFORE the Right Honourable RICHARD CLARKE, Esq; LORD MAYOR of the City of London; the Honourable EDWARD WILLES, Esq; one of the Justice of his Majesty's Court of King's Bench; the Honourable Sir BEAUMONT HOTHAM, Knt. one of the Barons of his Majesty's Court of Exchequer; the Honourable JAMES ADAMS, Serjeant at Law, Recorder of the said City; JOHN WILLIAM ROSE, Esq; and others his Majesty's Justices of Oyer and Terminer of the City of London, and Justices of Gaol Delivery of Newgate, holden for the said City and County of Middlesex.

At Fort Morea, on the Coast of Africa,

On the Fourth of August, 1782:

INDICTMENT

KENITH MACKENZIE was indicted by the name of Kenith Mackenzie, late of London, Esquire, for that he, not having the fear of God before his eyes, but being moved and seduced by the instigation of the devil, on the 24th day of August, in the 22d year of his present Majesty's reign, with force and arms, at Fort Morea on the Coast of Africa, in parts beyond the seas, in and upon Kenith Murray Mackenzie, feloniously, wilfully, and of his malice aforethought did make an assault, and that he a certain great gun, called a cannon, value 20s. then and there charged with gunpowder and one iron ball, did discharge and shoot off, to, against, and upon the said Kenith Murray Mackenzie, and by the said iron ball so shot off and discharged from the said cannon as aforesaid, wilfully and of his malice aforethought, did strike, penetrate, and wound the said Kenith Murray Mackenzie, giving to him on the left side of the belly one mortal wound of the length of six inches and of the breadth of three inches, of which he then and there

instantly died, and so the Jurors say, that he in manner and form aforesaid, then and there did kill and murder him the said Kenith Murray Mackenzie.

J U R Y

James Hanmer,	Robert Nash,
Richard Martin,	John Mackenzie,
William Hailstone,	Daniel Stewart,
Samuel Piggot,	John Monk,
John Bailey,	Abraham Jackson,
Thomas Whieldon,	John Brook.

Council for the Prosecution.

MR. ATTORNEY GENERAL,
MR. LEE,
MR. WILSON,
MR. FIELDING.

Attornies.

Messrs. CHAMBERLAYNE and WHITE.

Council for the Prisoner.

MR. SILVESTER, MR. ADAM.

Attorney.

HENRY DAGGE, Esq.

Mr.

Mr. Fielding opened the Indictment; and Mr. Attorney General opened the Case as follows:

May it please your Lordship, and you, Gentlemen of the jury, the prisoner at the bar, Captain Kenneth Mackenzie, has your Lordship heard, stands indicted for the wilful murder of Kenneth Murray Mackenzie, on the coast of Africa, without this realising and, Gentlemen, in a case like this, it would very ill become me to do more, and I am sure I shall very sufficiently discharge my duty in doing that which I state to you the facts, without endeavouring to excite your passions, or aggravate the offence of the prisoner; I shall, therefore, content myself with stating those facts, but you are to make observations on the nature of the defence. The prisoner at the bar, who is a man of some rank, went out in the beginning of the year 1782, Captain of an independent company, in the *Leander*, to attack some of the Dutch settlements on the coast of Africa; the *Leander* returned, and he was left commander of this company, and also commander of a fort, called Fort Moreau, after he had been there some time, this unfortunate man, whose death was undoubtedly owing to the act of the prisoner, for some offence or other, was by him made prisoner, and fearing the consequences of the discipline that the prisoner might inflict, he did prevail on the sentry to let him escape to Black Town; the prisoner, as soon as he heard of it, was violently enraged, and immediately ordered the guns of the fort to be pointed towards that town, declaring that if they did not immediately restore the deceased, he would lay the town in ashes by those threats, the inhabitants of that town, who were chiefly blacks, did the next morning bring back the deceased, and deliver him into the custody of Captain Mackenzie, who immediately ordered him to prepare for instant death; and very soon afterwards you will find had him brought out before the fort, and had his hands tied to a handspike, and in that situation he placed him to the mouth of a great gun, and then

with a pistol which he held at the head of one of the men, he ordered him instantly to discharge the cannon, and blow the deceased into the air; the poor man, standing in this situation, turned round and said, Plunket, you will not kill me! yes, said he; I will, if my master bids me. Gentlemen, this very circumstance, in my opinion, shews a very great degree of power indeed, which this Gentleman must have over his garrison, who could see an execution performed in a manner totally unheard of in any country, and by a mode of military execution, if it is to be called so, which I trust never will be adopted. Gentlemen, this is all the observation I shall make; I shall proceed now only to state what evidence has appeared with respect to the prisoner's motives for this act; and it will appear to you, he himself has declared what passed on that occasion to one or two persons, to whom he made no scruple to declare what he had done, and the manner in which he had done it; and these declarations were made in terms which I am surprised that any man who ever thought proper to make such an example should ever use; for he did not think proper merely to relate the fact and the manner in which he made this example, and which, as I suppose, he will allege to day, he did by necessity, but in relating this transaction he said, he sent him out of the world *à la façon*. Gentlemen, what defence the prisoner can make, and in what manner he can justify so very violent and so very extraordinary an act on the life of his fellow subject, I cannot possibly imagine; I cannot at all figure to my mind any legal excuse for such an act as this; however, I will lay before you those facts which I have stated, and you will, I am sure, under my Lord's direction, pass that judgment on those facts, which is to decide the fate of the prisoner at the bar; you will determine whether or no it was maliciously done. Gentlemen, it is not at all necessary for me to add more on this case, I shall confine myself to the facts alone, and I doubt not but you will on this occasion

because do so filed to your country, in the exercise of that liberality; which I shall with ever distinguish. *Witness examined apart at the request of the Prisoner's Council.*

In Court. Is Plunket to be examined, as a witness on either side?—Plunket is dead.

JOHN JONES *Jurat.*

Examined by Mr. Lee. Was you a passenger on board an Ordnance store-ship at any time on the coast of Africa?—I was.

Was you there at the time which gave rise to this prosecution?—Yes.

When was that?—I think the latter end of July, of the year 1782.

In what year?—In the year 1782.

What part of the coast of Africa was you at?—From one end to the other; from Goree down to the Brazils, St. Thomas's, &c.

Where was you at the time that the unfortunate deceased was put to death?—At Fort Morea, to leeward of Cape Coast.

Relate to my Lord and the Jury what you know of that transaction, without my leading you particularly to it?—On Saturday the 8th of June 1782, I went passenger on board the Active, Ordnance store-ship; Captain Maiton, Commander; during the time that I was passenger on board the ship, I had no connections with ship duty, I frequently used to go on shore; on Sunday morning, I think it was the latter end of July, I went on shore in a canoe, the aforesaid canoe carried me to Fort Morea, where I was landed; on my landing I found the black people in a great confusion, I asked them the reason, and they told me that Captain Mackenzie had pointed two great guns to their town, and threatened to level it to the ground in case they did not deliver up his nephew.

That is not evidence what the people told you; did you see any guns at all?—I did.

Where were they pointed to?—I did not examine that. In the course of ten

minutes of a quarter of an hour after that, I came to the fort, and I found that the deceased had been delivered up; I there saw the deceased Kibith Murray Mackenzie.

In Court. Did you know him?—I never saw him, to my knowledge before.

Mr. Lee. When you saw him, was he at liberty, or was he in custody?—In custody of a soldier. What passed on this?—I went to Fort Morea, on my entrance to the fort I saw Captain Mackenzie coming out of a house in the fort, with a brace of pistols; one in each hand; they appeared to me like pistols; in a short time after that, two men followed him which I did not know, but they were white people, they were two soldiers that followed Captain Mackenzie.

Mr. Lee. You said you saw Captain Mackenzie come to the fort, did you know him before?—Perfectly well, I saw him on board the Active, and at Cape Coast several times; I knew him through his confining

in Lieutenant Clarke, of the Active, of Africa; he said that the Gentleman—that is the Gentleman, not a soldier.

Proceed in your story. I saw these two men, Captain Mackenzie halted a little, they passed him; and he followed them at some little distance; they went towards the platform; coming there, the deceased was put before the mouth of a gun. Who put the deceased there?—A soldier, one of the two men that I saw in company with him there, there was one soldier and the deceased.

Was the deceased one of the two men that you saw passing by the prisoner now at the bar, while he was halting?—Yes; after the deceased was put before the mouth of a gun, his hands were extended out in this manner, to a handspike, or something of that sort.

Do you know how he came to be put in that posture, by whose directions, did you hear any orders given for that purpose by any person?—I was not near enough to hear any orders, I was crowded among the blacks, equally the same as a crowd in England; the men who fixed him there withdrew.

drove and came abreast of the gun; I saw the flash, I heard the report, and that is all; he came to the hole where the touch-hole is, with a match, or something like that, and I saw the flash, heard the report, and saw nothing more of the deceased.

Pray, crowded as you was amongst the blacks, could you see at the time that this report was made and the flash preceeded, that there was anybody standing at the mouth of a gun?—It appeared to me like a man; there was a body at the muzzle of the gun at the time; I saw the flash, and heard the reports.

Do you know where Captain Mackenzie, the prisoner, was at that time?—Abreast of the gun, on the opposite side of the man who fired the gun; one man stood on one side the gun and he on the other.

How far might you be off at the time this happened?—About one hundred yards or better. I do not know whether it was or not, being confused I had not an opportunity of making any remarks; it was between the hours of seven and eight, it might be eight, quite day-light, I had no watch at that time.

Was it broad day-light?—Broad day-light.

As it now, I suppose?—Equally the same.

Do you recollect when this happened?—On Sunday morning, about the latter end of July I think; not having connections with any ship's duty, I seldom or ever looked at a log-book, therefore I did not know the day of the month.

You do not know, I suppose, what became of the body?—I do not.

Cross-examined by Mr. Silvester.

What are you?—I belong to the navy, six years.

What do you mean by that?—His Majesty's service, I was a Captain's steward.

How came you to go to Africa?—I was Captain's steward.

How came you just now to tell us, you went out as passenger, on board his Ma-

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jesty's ship Argo, how came you to leave your station?—Because the Captain and I had a dispute.

Then the Captain turned you off, and you came home in another ship?—He gave me a certificate.

Have you that certificate about you?—No.

I thought not?—I can soon send for it; I was in that situation as Captain's steward, till Saturday the 8th of June; at which time the Captain gave me a certificate, and sent me on board of his own ship, to the coast of Africa, the other ship was bound to England.

Where was this vessel stationed?—In Cape Coast roads.

How far is that from Morea?—About three miles.

You made use of a very odd expression for a seafaring man, the *aforsaid* canoe, where did you learn that term *aforsaid*?—I learned it at school, I am not accomplished with abilities as well as you are.

Do you think that behaviour will get you any credit with the Jury, you must consider, though that man is standing here for his life, it may be your case sometime or other?—I hope not.

Then do not be so flippant?—I will answer you every question.

You know nobody at the fort?—Only Captain Mackenzie.

Then you did not know the number of men that were there?—No.

Nor the situation of the coast?—I was deprived of that, the situation that I saw the culprit blown from the mouth of a gun, it was not a time for me to make any remarks; I never had been there before to my knowledge, I never saw the deceased before.

Had you been ever on shore before?—I was always on shore at Sanfedeus, I lodged there; I never was at Morea before this day, I do not recollect the day of the month, I marked it down immediately, when I came on board, I made remarks immediately upon what I had seen; but

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the day of the month. I never thought to look into it.

But the hour, you remarked?—It was about eight.

How came you to recollect the hour so well, and not the day?—Having no connections with ship's duty, I never looked at the log board.

Then you only put down the hour, you did not put down the day at all?—I know it was of a Sunday morning, because of the Catamoran.

I will give you a reason why you do not chuse to mention the day?—Why, Sir?

Because you will be contradicted by your own witnesses?—I never thought it would be brought to this pitch, I only inadvertently spoke of it.

Was not you the man that gave the information?—I was, I inadvertently spoke of it in Charles-street, Berkley-square.

Then how came you to make a remark of the business?—In order for the satisfaction of my friends in England, or any person I corresponded with.

What had your friends in England, to do with this man abroad?—They did not know the man abroad.

Mr. Jones, then you put it down by way of information for your friends particularly, of the transaction when you came to England?—That was my motive.

How came you to particularise the day and the hour?—I did, I had no other motive than I have told you, in order to acquaint my friends in England, and myself, of the cruelty that was acted, I did not know the day of the month, I am positive of that.

Have you got that paper, did you put it down at the time?—I will send for the book if you please, it is over at the Rose Tavern.

You never saw the man that was shot?—No.

You do not know his name of your own knowledge?—No, I never had any acquaintance with him in my life, to my knowledge.

The situation the garrison was in at that time, you do not know?—No.

You had never been at the fort before nor since?—No.

Only by mere accident and chance you went there?—Inadvertently, in order to see the fort.

What was your business on shore?—A party of pleasure.

What amongst the black people?—Yes.

No business at all, but merely to go amongst these black people?—I went on shore in order to see Fort Mores, I went from Cape Coast merely on a party of pleasure.

Then how came you to be every day on shore?—I was on shore every day at Cape Coast, but not at Fort Mores.

Did you know any person in the fort?—I knew those people that traded on board.

If you was ever there, you know, that is not an answer, did you know any of the white people?—I knew Captain Mackenzie, I knew another white man, that was assistant to Captain Mackenzie; he was pilot to take the Argo up to the Dutch Commander, he was the pilot stationed at the quarter-deck, he was not at the Fort at that time, I knew nobody there but Captain Mackenzie.

Will you describe the situation the fort was in?—I cannot.

Can you describe the extent of it?—I cannot presume to say, I would not say beyond my bath on any occasion.

Can you describe the size of it?—Larger than this hall a great deal, it was a Dutch Fort taken by the Leander, Captain Shirley.

Did you keep a journal?—Not on board the Active, on board the Argo I kept a journal.

You went on shore that morning?—Yes, in a canoe, about six or a little after.

Never before?—No, Sir, it is not allowed.

Prisoner. You say you came from Captain Malton's ship in a canoe?—Yes.

At what o'clock do the canoes come off?

off?—Not before gun-firing, a little after, they come.

Is that at daylight?—At day light.

At what o'clock is it day light in that country, at that time of the year?—It is day light at five in the morning, and before.

Did the canoe carry you back to Cape Coast, Sir?—Yes.

Whose canoe was it?—Captain Caffrey Badrou, a black fellow.

Did the canoes regularly come to your ship as a trading ship, to trade with them before day light, or at day light, or at what period did they come to trade?—At day light.

They always came by day light to trade?—Yes, always, and always after, till we came to Coast roads.

How many hours did it take to work down?—You know that as well as I do.

I am not asking you what I know, but what you know; what time do you imagine you could paddle down there?—In the course of thirty minutes.

How many paddles had the canoe?—I believe there were four, you know Caffrey Badrou very well, I think it was a four paddle canoe.

Be sure, Sir, that is not a trading canoe?—It is.

How many miles is it by sea?—Three.

Could you come three miles in that period?—In about twenty or thirty minutes at furthest, we always can paddle down, because it is always to leeward.

Was there a sentry at the fort at the fort?—I do not recollect seeing a sentinel.

Pray did you scale the walls then, Sir, or come through the walls?—I came through the door.

Are you positive there was no sentinel at the door?—There might, I did not perceive him; there was a vast number of people.

In a word, were the gates open or shut?—Open.

And you saw no sentry?—No.

Then I must be very deficient in my duty, did no person challenge you on your coming in?—No.

And yet you knew nobody in the fort?

—Only Captain Mackenzie.

You did not speak to him?—No, I stood from the platform a hundred yards.

Where were the blacks in the fort, on the outside?—In the fort, the platform goes round,

Where was you standing?—About a hundred yards distant from the platform, upon the entrance of the gate within.

You recollect seeing a number of black people there?—I do not recollect the number.

Prisoner. Stop! stop! Sir, I will make you recollect, are there not steps to the platform; truth must come out, my friend, for you never was there Mr. Jones, any more than his Lordship?—No man can dispute it.

What breadth was the platform?—I do not know, do I know the breadth of this table now.

Prisoner. My Lord, the fort is a continued platform, there is no other ground to go upon, not an inch, so that he must have been on the platform, or else not at all in that fort.

Court. What do you take to be the breadth of the fort, in any one part?—I really cannot tell you.

Because you say you was at the entrance?—The blacks were along with me, and I was in the middle of them; so far as this, my attention was too great to see the man blown from the mouth of a gun, that I had not time.

Then you cannot speak to the distance you was off, when the cannon was fired?

—I cannot, it might be a hundred yards, more or less, I cannot be positive.

Prisoner. My Lord, please to let the witness describe the fort to the Court, and the way of the entrance?—Much the same as Cape Coast.

Describe it to the Court?—Equally the same as Cape Coast; you go up steps, and then you turn to the left at Cape Coast, and in the room of that, at Mores you turn to the right.

Prisoner. When you enter the gate, what

Is the next object that strikes your eye?—I do not recollect.

How can you possibly go over a draw-bridge, and not recollect it; is there a draw-bridge in that fort?—There are a sort of boards.

There is a draw-bridge there; I will refresh your memory, young man?—You cannot refresh my memory.

Another question, I wish to confute this witness, my Lord; for he never was there; you cross a draw-bridge, what is the next object you see?—As I have told my Lord before, never being in the fort but once, and seeing the object I saw, put before the mouth of a cannon, it was impossible for me to make any remarks on the fort.

You know there is a serjeant's room for a guard room, where there is always a guard to receive and turn out strangers?—At this time you was afraid to trust your soldiers with any ammunition, therefore there could be no guard; and you kept the keys of the fort yourself.

Prisoner. Aye; and how came you in then.

Mr. Silvester. How do you know that?—I undoubtedly must have seen soldiers, if there was a guard; I heard of it afterwards.

Mr. Attorney General. Who told you this, the natives?—Yes.

That is not evidence.

Prisoner. You say I had the key of the fort in my pocket?—I only go by hearsay, I have related all I knew, and the truth.

Court. You said, you was in the inside of the fort, and the blacks were at the outside of the fort?—I was in the middle.

Were the blacks in the fort?—All the blacks.

I think you said, nobody was in the fort but yourself, and the blacks were outside the fort?—I never said it, I did not say it, I was in the middle of the blacks as nigh as I can guess.

Was you in the fort, or out of the fort?—I was in the fort.

And were all the blacks in the fort at that time?—In the fort.

Court. Did you relate this fact to any

person on board your ship?—As soon as I went on board I related it.

Is there anybody here to whom you made that relation?—I saw a man at the Rose-tavern, a little while ago, that can relate the same; he took a copy from my journal that I made at the time.

Prisoner. I wish the witness to account to this Honourable Court, how these three hundred blacks and himself came in; if I had the key in my pocket?

Court. How was it possible that you and the three hundred people got into the fort, at the time you say, if the prisoner had the key in his pocket? (to the prisoner) that is your question.

Prisoner. It is my Lord, the sense of it?—The reason is, these blacks surrendered this man, who is the deceased; that was the reason they were admitted into the fort.

JOHN MORTIMER sworn.

Examined by Mr. Wilson.

What are you?—I belonged to Captain Mackenzie's company; I enlisted with him for three years, during the war.

Was you with him on the coast of Africa?—Yes, I was with him till he was taken a prisoner.

Did you know Kenith Murray-Mackenzie?—Yes.

Was he too on the coast of Africa?—Yes.

Where was it that Captain Mackenzie was with you and the soldiers at the fort?—At a place called Morea, five miles beyond Cape Coast; it is in the latitude of three.

Relate now what passed about Murray Mackenzie?—I heard that Captain Mackenzie and this Murray should have some falling out, I do not know what it was, I was at Cape Coast, and Murray came up to Cape Coast; I cannot tell what time that was; I never thought to live a minute, I was very bad.

Court. Tell us what you know of your own knowledge; you say you was under Captain Mackenzie's command at Morea?—Yes.

And

And so was Murray?—Yes, I was with him. Were you and he in the fort of Morea together with Captain Mackenzie?—Yes. When you came back to Morea, did you see any thing that passed between Murray and Captain Mackenzie?—Murray was there before me, and one morning he got out of the garrison; I was then in the fort.

That was after your illness?—Yes.

Mr. Wilson. Can you at all tell what time that was?—I cannot tell what month, or what day of the month it was. Do you know any thing of your own knowledge what Captain Mackenzie did?—One Brooks let him out of the garrison, and Captain Mackenzie came and called Brooks up to flog him; I heard Captain Mackenzie say to serjeant Andrews, go and fetch up that old rascal, for I will flog him to death; by God. You heard him say that?—I did; then Captain Mackenzie ordered the serjeant to write a pass for me, and one William Coupland, and John Jarvis, to go and look after him.

Did you in consequence of this go and look after him?—We did; we did not go quite so far as we were sent; or else we should have been taken prisoners; we came back again to Captain Mackenzie, and told him we could not find Murray Mackenzie; we had orders to go to the Dutch mines, and Captain Crawford said, here is a pass; I never saw such a thing in my life: we went to Cape Coast to look after him, we had orders to go further.

Is there a town near Morea, called the Black Town?—It is close to it, we went through the town to go to Cape Coast; we did not search for him there; we came back about three in the afternoon; the Captain said, if you cannot find him, you must load two six-pounders, and fire into the town, meaning the Black town; the black men came round to the back of the fort, but many of them ran out of the town; the two six-pounders were fired into the town; some of the blacks came out, and others came to the back of the fort.

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to know the reason why they fired into the town.

Alderman Watfow. Were the guns shot, or only with powder to give them notice?—They were loaded with shot; I saw the hole where one of the balls had hit, which knocked down a piece of a house; the blacks came to know the reason.

Was Murray Mackenzie afterwards brought from the town?—Next morning we heard a noise a little after five, coming to look about, we saw this man and a matter of three thousand blacks; (never there was a man in the world) and the deceased was in the middle. What day of the week was that?—It was on a Sunday morning.

Where was it that you saw him?—I saw him at the garrison gate.

When you first saw him, where were the blacks?—They were without the fort, the gates were not opened at that time; then Captain Mackenzie hearing they had brought in the deceased, he got up, and went and looked at Murray Mackenzie; but before that, a little while after five, about five and six, Captain Mackenzie ordered the men to get two sponges and one bomb, or two worms and one sponge, I am not quite sure which; and to lash them across the breasts.

Did you hear Captain Mackenzie order what was to be done with them?—Yes; presently after that a gun was hauled in, we could not get any ropes for a good while, at last we cut the English balliards, what we hoist the colours with, we cut them into three parts; then I heard Captain Mackenzie tell Coupland to take a file of men, and go down and fetch Murray Mackenzie from the blacks; accordingly he went down with the file of men; I saw him brought back, and as he was coming past his own door where he used to lay, this man says, now do not let me go any further till after my station; if I am going to be shot, like a dog, let me be shot like a man; he pulled off his gentleman's coat, and put on a grenadier's coat, a private soldier's coat; his coat

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that he had on was a sort of a fluff-colour coat; he acted as Adjutant. Then he came upon the battlements; when he came there, Captain Mackenzie saw him, I was there, and I saw him then, I followed him up to the battlements for all I was not one of the file of men.

What passed then?—Then this Murray wanted to speak to Captain Mackenzie; Captain Mackenzie said no, I will not hear a word from you.

Mr. Baron Hobham. What was he, a private soldier?—He was one of the convicts, respites, came out of the Savoy; they came ironed two and two when we came board: Captain Mackenzie told him he would not hear a word from him, for he was a traitor to his King and country; accordingly says he to all the men that was there, soldiers, lay hold and do your duty; the men laid hold.

How many soldiers were there?—About thirty I think, to the best of my knowledge, I will not be punctual to a man or so; they laid hold of him, tie him up there, says he, to that gun.

Do you know who it was in particular that laid hold of him?—No, Sir, I do not, I stood by, and they laid hold of him; then Captain Mackenzie says again, why do not more of you lay hold of him; then I laid hold of him: then Captain Mackenzie told us to tie one of these ropes that were cut into three parts, round both his hands together, the other rope was to tie his right leg just above his knee, and another rope was tied round his left leg, accordingly he was ordered to sit down upon the embrasure, that is where the gun goes level with the fort, he could just get in to sit down, when he sat down his hands were ordered to be tied up to those two sponges and a worm, or the two worms and one sponge, I cannot say which with certainty; then his leg was tied in two round turns round the muzzle of the gun, then the other leg was tied the same; when the legs were tied, Captain Mackenzie said, has any of you got a night-cap? no, Sir, says they; then, says he, if

none of you has got a night-cap, I will go and fetch my own; he went into the hall and fetched his own night-cap out, and says to his men, soldiers, one of you put it on his head, I cannot rightly say who the soldier was; it was pulled over his eyes accordingly; just then Murray Mackenzie says to William Coupland, do, for God's sake, ask for half an hour to say my prayers; accordingly Coupland went to Captain Mackenzie, and said something to him, I do not know what; I heard Captain Mackenzie answer Coupland, no, you rascal, if any man speaks a word in his favour, I will blow his brains out immediately, he had a pistol in his hands at the time; accordingly he did grant him a little time to say his prayers, there was a little of the burial service of the dead read to him, and the Lord's prayer; accordingly when he had read a little of the burial of the dead and the Lord's prayer, Captain Mackenzie says, he shall not have any more time; pull the Prayer Book away directly.

Court. How long might the respite last from the time Coupland applied for it?—To the best of my knowledge about twenty minutes, when the Prayer Book was pulled away: there was a man stood with a lighted stick, his name was John Plunket, he stood right facing, almost by the hall door, he stood away from the cannon, the deceased could not see him; there is a little bit of a corner runs in, and he stood behind that, and Captain Mackenzie said, Plunket, when I give you the *hauser*, fire the gun; the *hauser* is a signal with the hand.

Count. How near was Captain Mackenzie at that time, was he the same side as Plunket, or the other side?—He was behind the gun like, it was more to the left of the gun.

Was Plunket to the right or to the left?—He was to the left of the gun, the prisoner stood almost opposite to Plunket; says Captain Mackenzie, pull the cap over his eyes, I could not tell who pulled the cap over his eyes, and the deceased says, O tyrant! tyrant! now you are going to have your will

will of me, what you wanted many a long day ago. Accordingly, the cap was pulled over the eyes of the deceased, and as the man was pulling the cap over his eyes, which took up some time, as his head was too big for the night-cap, the deceased said, *O for God's sake have mercy upon me!* Then he said, *good bye to you all, comrades, and God bless you all.* Another word, he said, *remember the very last syllable I am going to speak, I only went down to the black fellow, the black man at the gate, to buy a little brandy; I went to his house and bought some, and drank it, and I went to the garden to take a walk after that, and not having been out of the garrison for so long a time, I sat down in the garden in such a place, and when I sat down, I fell fast asleep, when I awaked, it was just at duskish last night; when I awaked, I was coming up to the fort, and the blacks laid hold of me and took me into their huts, and kept me there all night, and brought me here in the morning: he said he had no more intent to desert than he had to eat and drink that minute; then Captain Mackenzie waved his hand, and Plunkett came with a lighted stick and touched the touch-hole, and the gun went off; there was no more to see of the man upon the battlements, he was blown over the wall: I had two round turns round the muzzle of the gun, and the other end was round his leg, and it took off the skin of my hand; he was killed, he was tore all to pieces, all but his head, and his shoulders, and legs, and he had his arms on him, I saw him after, there was his kidneys, and his liver and lights, as plain to be seen as ever any thing was in the world; I went down and looked at his remains, and the men went and picked up his remains and buried them.*

Cross-examined by Mr. Adam.

When you got to Africa, after you was settled in those garrisons that were taken from the Dutch, were there still hostilities between you and the Dutch; were the Dutch in arms there?—Yes, Sir, we were put against our enemy, directly.

But after you had taken possession of the fort?—At St. George de la Mayné, we

were three or four days there, that is seventeen miles from Morea, that was the nearest Dutch fort to us; it was twelve miles from Cape Coast, and seventeen miles from Morea.

Did you ever hear any conversation relative to the deceased's connection with this fort?—No, Sir.

How far is it by water from Morea to the nearest Dutch fort?—I do not know, it is that by land.

Does the land there make a bay?—You go round a parcel of rocks and things; I never heard Murray the deceased had any connection at those Dutch settlements.

I think you said, that the deceased Murray Mackenzie had been in the fort of Morea for some time after his return from Cape Coast?—Yes.

In what situation was he there for some time?—He was a fort of prisoner at large, he was not confined, only that he must not go out of the garrison gate.

Do you know why he was kept a prisoner at large?—No, Sir, only as I heard, and that will not do.

Had he any irons on him?—No, Sir.

Did he do any duty as a soldier?—No, Sir, or else he could not be a prisoner.

How long had he been so confined?—I cannot tell rightly, Sir, when he left Cape Coast, I was there about three weeks, he was there before me.

You mentioned I think the particular time of the morning of the day when he went out of the fort to go to the Black Town, at what time of the morning was it that he went out of the fort?—On Saturday morning, between six and seven.

And the sentinel let him pass?—Yes.

In consequence of the sentinel's letting him pass, he being a prisoner at large, Captain Mackenzie sent for the sentry?—Yes.

He afterwards had a pass made out to you and two other persons to go in search for Murray Mackenzie?—Yes.

At what time was this pass made out?—About a quarter after seven.

Tell the Court and Jury where the black man's house is, where he went to drink bran-

47, as he said in his dying speech. His name is Peter; I cannot tell you how far it is from the fort. It is not half a quarter of a mile.

Did you go immediately in search of him?—Yes the sentry was a flogging when I went away.

When you went in search of him, was you obliged to pass by this black man's house?—Very near it, but we did not know he went there then.

It was very customary for the soldiers to go there and get drunk, it was a kind of a public house?—No, Sir, no such thing.

How far was the Black Town that was fired upon from the fort?—Close to the fort, or very near.

Did you enquire after Murray Mackenzie when you went to the Black Town?—As we went down through the town along to Cape Coast, if we met anybody we enquired; we asked one, and he said he had not seen a white man since he left Cape Coast, we went to Cape Coast, we were afraid of going further, for fear of being taken prisoners by the Dutch.

You said the deceased acted as Adjutant?—Yes, when he did act at all; he was Governor of Cormontee, he was one of the convicts, but was made a serjeant.

Who appointed him to the place of serjeant, who was the commanding officer at Morea?—Captain Mackenzie, he broke our serjeants and corporals, and made these serjeants and corporals over our heads, I had never done anything in my life, that was very hard, I was only a private; Murray Mackenzie used to exercise us at Cape Coast once or twice before.

What had Mackenzie been convicted of?—I cannot say.

Court. That is nothing of one side or the other.

Did you ever hear any conversation between the deceased Murray Mackenzie and any of the other soldiers in the garrison?—I never did no otherwise than this, I was in a room that had a great hole in it, he being a gentleman, he thought himself above me,

so if anybody came to him, I used to walk out and leave them to talk to themselves; a day or two after this man was shot, Captain Mackenzie came below, off from the battlements, there was a good many men of us below in the yard, he says, well, my men, if I had not done this, what I have done, you and all of us would have been dead long enough before this.

Mr. Adam. How many black men were there about at this time?—Plenty of men and women, a vast many, there is no counting them, it is impossible; there was no white men in the fort at the time the man was shot, that I saw or ever heard of, but Lieutenant Massie, and Captain Mackenzie, and the soldiers, and Lieutenant Massie died the next day.

Do you happen to know what his disease was?—No, he always used to be a mighty man for playing the flute, he was always at that from morning to night.

How long did you reside on the coast altogether?—About eighteen or nineteen months to the best of my knowledge.

What is the size of the Fort of Morea?—I cannot tell you how far it is round, I never measured it, it mounts about twenty guns, it is bigger than this place here, a good deal bigger than this place, about once and a half, or it may be twice, it is a very large place.

How many soldiers were there in this place when this man was shot?—About thirty who saw this affair done.

Jones called in again. Do you know Jones?

Jones. I know him perfectly well.

To Mortimer. Did you ever see that man on the coast of Africa?—Not to my knowledge, I might see him, but not to my knowledge, I never saw him in Fort Morea to my knowledge.

How many black men were there in Fort Morea the morning of this execution?—I do not know, I said about two, or three, or four, inside the fort, the outside gate is nothing at all, because there is a little bit of a place, a draw-bridge it has been, there might

might be a good many black people I believe there.

Is it within any pales?—It is, but there is a little bolt to that gate, and then there are bars and bolts to the other great gates, there is about five steps to come into the place to the best of my knowledge.

Court to Jones. Where did you and the blacks stand at the time this man was blown away?—The inside of the outer gate. I was in the entrance of the fort.

Mortimer. I will take my oath if he was there, that no man in the world could see any thing of the affair, because there is all the garrison all upon you, that you cannot without you come in ten or a dozen steps, or twenty steps; if he was inside the second gate, I am sure he could not see any thing.

Court to Jones. Where was you?—I was in through two gateways.

Mr. Baron Hotham. That is the first time you have said that, Mr. Jones.—I never was asked before.

Mortimer. I am sure he could not, without he came through three more doors, then he must go up twenty steps to come into the battlements, for you could not see in the yard; he could see if he came inside the first gate, because there it is all clear, and there is a draw bridge, and you can loll upon the rail, and see the man tied to the gun, if he was only through the first little gate he might, but if he was through two, it is impossible for any body to see; if he stood through the first little gate, he might see him, and there might be some people there.

Mr. Silvester. Could he see the house of the fort?—No, Sir, he could not see the hall, but there is a corner runs out, he might see the man there.

Could he see people walking backwards and forwards?—He might through one of the gun holes, if he was in the first gate, but not if he was in the second; if he was through two gates he could not see any thing.

Mr. Adam to Mortimer. Were those thirty or thirty-five that you mentioned, soldiers of Captain Mackenzie's company?—

There were some of all sorts, some from the Savoy, some from the hulks, and some volunteers; I never wronged or robbed a man of a halfpenny in my life, but there is two come home now that you might find out, two old offenders; they were all made alike when we got there.

Mr. Wilson. What garrison was there at Cape Coast Castle?—They have two and forty pounders now there, and eighteens: I cannot tell how many men there were in the garrison, I cannot form any judgment on the subject.

What number of officers were there?—There was a good many officers there, but without officers and the doctors, and one thing or another, there might be about fifteen or near twenty.

Could there have been any danger or difficulty in keeping a man prisoner in Morea Castle?—When this man was shot, there were two men in the slave hole, but there was room for more than that, there was the men that let this man out of the garrison, that was Brooks and Thomas Maples, one of these men that is come home now.

Mr. Atah. What sort of place is the slave hole?—A place with iron bars, and a good strong door, they might put on a sentry, but if they did not it would be safe enough; in Cape Coast castle which was larger, you might keep a man any where.

Court. How many lashes had Brooks that morning?—It was computed, but nobody could count them, that he had fifteen hundred at once.

Might not the prisoner have sent the deceased to prison at Cape Coast?—Yes.

Were there officers enough at Cape Coast to have held a Court Martial?—I do not know whether the Company could have done that, there was no King's officers there, but he might have been confined at the slave hole, or sent to Cape Coast, and a white man to take care of him to guard him.

Mr. Silvester. How is the slave hole fastened?

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tened?—There is one door when you are in, that shuts after you, then there is another door that has a common lock and key, then the other door has an iron bar and padlock.

How many convicts had you at that time?—A good many.

There was no strong gaol?—There were iron bars across, as thick as your three fingers, on the outside door; there was a great iron bar came across and a padlock, the other had a padlock and staple, I do not doubt, but a person might open it, if they chose it on the outside.

Court. Those that were inside could not have opened the padlock?—No; we had between thirty and forty in all.

The greatest part of them were convicts?—There might be two convicts for one volunteer, I will not be sure.

Mr. Silvester to Jones. When you was on the coast, you, I suppose, made some inquiry about the matter; you heard, did not you, of the fort being delivered up by the Dutch?—I did, by some of the natives; I was not there at the time present.

Did not you hear, they meant to murder Captain Mackenzie?—I will tell you something about that, as I have already spoken, I am able to speak again, I did hear that.

Mr. Silvester. What do you know of any conspiracy?—I never heard, so help me God, only since I have been in England.

Mr. Silvester to Jones. At the time the man was flogged for letting Murray escape, was there any discovery made at that time?—A little after, before the man was executed, and after this man received his punishment.

What was the discovery?—I heard it by the natives, that Captain Mackenzie.

Mr. Attorney General. When did you hear it, and from whom?—I heard it the morning following, or in the course of two or three mornings after I was on board, a native told me.

Court. We certainly cannot hear any of this hearsay conversation, because you have Brooks here himself.

JOB COOPER sworn

Prisoner. I wish Mortimer may retire till he is wanted again, as I may have some questions to ask.

Examined by Mr. Fielding.

Was you under the command of Captain Mackenzie, at fort Mores, on the coast of Africa?—Yes.

You remember the morning of the execution of Murray Mackenzie?—I do, I saw him brought and delivered to Captain Mackenzie.

How many blacks might accompany him?—About three hundred, there were a great number.

Did they get to the inside fort or only beyond the outward gate?—Beyond the outward gate, between the trees and the gate.

Where was it that Murray Mackenzie was delivered to the hands of the parties that went for him?—I did not see him.

Did you see Captain Mackenzie, when Murray Mackenzie first came within the inside gate?—I did not.

Where did you see Captain Mackenzie and the deceased first together?—Upon the battlements, the deceased was in a red coat then, and Captain Mackenzie ordered him to be tied up, and he begged leave for some time to say his prayers, and I was the man, that went and fetched a prayer book for him.

Court. Did he read himself, or did any body read to him?—Another man read to him.

Mr. Fielding. How long was he allowed to go through this ceremony?—About twenty minutes.

What followed?—Captain Mackenzie made a signal for the man to fire the gun, one John Plunkett fired the gun, he was standing in the hall door upon the steps. I saw the man tied up at the muzzle of the gun, I did not assist in helping him; I was between the hall door and the gun, where he was fired away from; I was not employed in any thing, I saw the carcass after it was shot away, I helped to gather it up, the

the legs and head were left, but the middle part of the body was tore to pieces.

Mr. Silvester. Then the Captain at the time the gun was fired stood at the hall door?—Yes, upon the upper steps.

How far was that from the cannon?—Further than from you to me, I knew the man that was shot, I was very little in his company, I was not under his command.

Had you given any information to Captain Mackenzie of any transactions, or any plan formed by Mackenzie and the other convicts?—I did, Sir, in the garden I heard it, it was a couple of days before this affair happened; I was come out of the garden, it was a very hot day, I laid myself down on a mat, I was very sick and poorly, and I heard Murray Mackenzie come out of his room door, and he said *now is the time, let us do him out and out.*

Who was he then talking to?—He was talking to one serjeant Andrews, that was with him.

Was Andrews a convict?—Yes, I heard no more that I can recollect.

What did you understand by that?—I cannot tell what they meant by that, they had an expression by doing out and out, they meant killing, but I was very uneasy about it, I thought it my duty to tell the Captain.

What was the situation of the fort at that time, how many convicts and how many volunteers?—The greatest number was the convicts, I cannot tell the number.

Do you know of your own knowledge of Murray Mackenzie having sent his property to the Dutch fort?—I saw him send a bundle of clothes out of the fort by black men, I did not know where it was sent to.

Had you heard of any other plan?—No, not that I can recollect, I heard several threatening words amongst them, but I cannot recollect them, threatening words of doing us out and out, if we said any thing, or any thing of that.

What do you mean?—To any one that offended them.

When you told the Captain of this con-

versation that you had overheard, did not you tell it him as if it applied to himself, as if they meant to destroy him?—I did, and I said, Sir, I hope you will send us away, for I should be very loth to have any misfortune happen amongst us.

Was there any expectations of the Dutch, or did you expect any mutiny?—I cannot say I ever did, I was always sick, and had the fever, I worked in the garden, I never took any notice of any body scarce.

Was there any danger, either of a mutiny or desertion?—There was a great many of them deserted, both convicts and volunteers.

If this man and others had deserted, would not the fort have been in danger?—It certainly would, had it been an enemy's fort, but it was peaceable times, and we were pretty well united together.

Mr. Attorney General. Was not you examined on this business, with respect to what you knew as to this accusation of Captain Mackenzie?—Yes.

Did you mention any one word of what you heard, at the time you was examined?—I never did mention it, because I never was asked.

Why did not you tell what you have now told, to the gentleman that examined you, for I never heard one word of it before?—I speak nothing but the truth, I never was asked that question, I did not think of it at that time.

Had you forgot it?—I did not think there ever would be any more about it.

Why did not you speak of it at that time?—I did not think of it at that time.

Had you forgot it?—No, I had not forgot it, but it was not in my thoughts.

Mr. Silvester. Was you ever asked the question before I asked it you?—We were examined at Cape Coast, and here.

Mr. Attorney General. And in neither of those examinations, you did not mention one single word of this conversation?—No, Sir, I did not.

What was your reason for not telling that as well as the rest?—I do not know, I did not recollect it at that time.

When

When did you first recollect it?—I have considered of it, and perused it ever since.

When was the first time after you had perused this in your mind, you told it to any body?—I cannot recollect the time.

Two or three days ago?—A long while ago.

Who have you mentioned it to?—I mentioned it to nobody, I told Mr. Monro of it several times, but I did not think it was material to mention.

PHILIP BROOKS *sworn.*

Examined by Mr. Lee.

I was sentinel at the gate of this Fort of Morea in Africa, I let Murray Mackenzie go out of the fort to speak to a black man, to get him half a gallon of brandy.

Did he return the same day?—No, he never returned till he was brought back.

Did he promise you to return the same day?—He said nothing to me, I said to him, make you haste in again, before Captain Mackenzie gets up; I was a prisoner when he was brought back, for letting him out of the fort; the Captain fired two six pounders upon the black people, I heard the gun fire, but I was in prison, I saw no more.

What punishment had you?—It was computed by the men, that I got near fifteen hundred lashes, I was tied up at seven bells, and was there till our bell struck one, this was after I heard the guns fired at the Port.

This was before the death of Mackenzie?—Mackenzie was brought in the morning after, about six o'clock, I was flogged the morning I let Mackenzie out.

Mr. Adam. You was sentinel at the gate on the Saturday morning?—Yes.

At the time you let Murray Mackenzie out, did not you know he was a prisoner at large?—Yes, I knew he was, but I did not think he would run away, because if he did, I expected to be punished.

Did you ever hear any conversation among the soldiers about Captain Macken-

zie?—I was, not in the fort when he was confined, I was on board the brig, I never heard any thing at all, only what Thomas Mapley and me had a great deal of conversation together about.

Court. Did you hear any thing before Murray Mackenzie was shot?—No.

Mr. Adam. Did you follow the deceased after you let him out of the gate?—Yes, I gave another man my firelock, I took off the bayonet; says I, take hold of my firelock, Murray has run away, I could not find him, he went into the Black Town, and there he concealed himself.

Do you remember any paper that was signed by the soldiers, at any time relative to the execution of Murray Mackenzie?—Never at that time, there was a paper signed after Captain Mackenzie was taken prisoner, but what was in it I do not know.

Court. You received fifteen hundred lashes; did not you at that time say you knew there was a conspiracy to seize the Captain?—Never, but afterwards Captain Mackenzie asked me the reason I let this man out, whether I had any bribe for it? I told him no, Sir; there was one *Farrington Tyde*, a little fellow, and Captain Mackenzie went to see this fellow, after Murray was dead.

But before he was shot?—I heard the convicts say, who were in a cluster together, *now is the time, let us hustle him, now is the time, let us do him.*

How long was this before Mackenzie was shot?—I cannot tell, it might be three weeks or a month before.

Did you tell the Captain of it before such time as Mackenzie was shot?—No.

Did you tell any thing of this conversation which you heard three weeks before Mackenzie was shot?—I never said, nor ever thought any thing about it.

When did you first disclose this conversation?—This was after Mackenzie was shot, I did not tell him of it before.

Mr. Lee. When did you first tell the prisoner at the bar after this?—Some time after the death of Murray Mackenzie.

You

You never mentioned a word of it to the prisoner at the bar before?—No.

How long after his death?—About a month.

Did you ever mention it to any other man in the world, till long after the death of Murray Mackenzie?—No I did not.

Never at all?—No, I did not.

Was ever Captain Mackenzie disobeyed by the garrison in any orders he gave?—Never that I saw, they all obeyed him very well, though to be sure there were bad men among them.

Suppose Captain Mackenzie had ordered this man to be carried any where else, would there have been any difficulty?—I cannot tell what others would have done.

Mr. Adam. When you pursued the deceased, was your firelock loaded?—No, it was not, if it had I cannot swear whether I should have shot him or no, but I would have shot very near him if I could, I should have thought myself justified in so doing.

And you had a right to shoot at him as a deserter?—Yes.

Mr. Justice Willes. What without orders, that is new martial law.

Mr. Adam. Were there any officers in the garrison at that time, besides Captain Mackenzie?—Yes, there were officers belonging to the marines at this time, one Massey, he was very sick, there was no officer in the garrison besides Captain Mackenzie.

Mr. Alderman Watson. Pray tell me Brooks, when you heard this conversation amongst the group of convicts, "let us hustle him," was Murray Mackenzie amongst them?—He was to be sure.

Mr Attorney General to Cooper. Has any body called on you since you came to town here to give evidence?—No, I went to the public-house with some gentleman, I do not know who he was, there was me and my comrade, one Reeves, went with the gentleman to the public-house to drink.

What did he want with you?—We went to drink.

How long ago?—It was the day before yesterday.

NUMB. I. PART I.

Where did this gentleman find you?—I was at the White Horse.

You came up as a witness here against Captain Mackenzie, you was brought up by this Gentleman, Mr. White?—Yes.

Who was the Gentleman that called on you?

Mr. Silvester. I object to this?—I do not know his name, I have seen him backwards and forwards.

Mr. Attorney. Who did you meet with there?—Some Gentlemen I do not know, I went along with Coupland and Maples, and another Gentleman, they were at the White Horse with us, there was Mr. Monro.

Was that the time that you told them?

—Yes, I did tell them, they asked me if I remembered it.

Oh! they did ask you?—Yes.

Mr. Silvester. You told Mr. Monro on the Coast?—Yes.

Court to Prisoner. Your council, except in point of law, are not allowed to speak for you, therefore now is the time for you to make your defence.

Prisoner. My Lords, I leave my defence intirely in the hands of my Council.

DANIEL MONRO sworn.

Examined by Mr. Silvester.

You have been at Cape Coast Castle I think?—Yes.

Do you know the Fort of Morea?—Yes.

Will you describe the kind of Fort?—

Yes, Sir, I had the charge of it for upwards of seven weeks under Captain Mackenzie, there is a gate before you enter the main Fort, with a wooden bridge between this gate and the main Fort, when you go over the bridge, there is an arch goes into the yard, then there is a turning that goes up upon the battlements, and as near as I can remember, or guess, the garrison is about, but not quite, a hundred yards square.

Court. It does not rest upon Jones's evidence.

Mr. Silvester. Then we will not go into that.

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Was

Was you there soon after, or at the time the man was executed?—It was some time after.

Had you any conversation with a man of the name of Job Cooper?—I had, I was sitting upon a gun looking over the wall, Job Cooper came to me.

Court. How soon after Mackenzie's execution was you at Morea?—It might be three, four, or five months, I cannot be sure, Cooper came to me; Sir, says he, do you know what gun you are sitting upon, No, says I, Cooper, what gun is it? Says he, this is the gun that Murray Mackenzie was executed from; so I says to him, well Cooper, what is that to me; I will be glad if you will tell me whether you think he deserved it? Yes, deserved it, yes, he did, says he, and it is a pity he should have lived so long as he has done, for if he had not been made an example of, what would have become of his Majesty's Fort, and all that was in it; I said, well Cooper, proceed, what did you hear? says he, I was laying down at the Serjeant's door upon a mat, and I heard Serjeant Murray, and Serjeant Andrews say, damn him, I have a brace of pistols that will do for him; and if they will not do for him says the other, I have got a sword.

I believe Andrews is dead since?—Yes, I saw him buried, says Cooper, I was frightened at the words, and I went and acquainted the Captain with it, and Captain Mackenzie, out of bodily fear, walked all night on the ramparts with a pistol in his hand; the first time I ever saw Murray Mackenzie in disgrace, was for deserting, I saw him twice taken up for a deserter.

Had the deceased Murray Mackenzie made any declarations in your presence, concerning the prisoner?—Yes, when Governor Myles ordered him in irons at Cape Coast, that was five or six months before I was told he was executed.

Was Captain Mackenzie then commanding officer?—Yes, Governor Myles was Governor of Cape Coast Castle of the company's fort, Governor Myles and Governor Reeves were walking along the side

of the garrison, and Murray Mackenzie was walking on the other side, and Governor Myles called to him, and asked him what he was doing there, what he wanted there; Murray made little reply; then the Governor sent Corporal Reynolds, a militia man, to put him in irons, I saw him in irons, and I says to him, Murray, what in the name of God have you been about? says he, by God if Captain Mackenzie does not see me righted, I will have his life; he was discharged that evening.

Did you acquaint Captain Mackenzie that his life was threatened?—I had very little acquaintance with Captain Mackenzie then, I hardly spoke to him; when Murray deserted the second time, I saw three privates and a corporal take him by force out of Job Garden's house in the Black Town; Captain Mackenzie then sent word by the Corporal, that if ever he went into that town again, he would hang him like a rascal as he was.

You know the slave hole at Morea Castle?—When I was there, it was a common deal wooden door, and a common padlock; any of the convicts that were there could open it with a nail; I have seen them do it, there was no other place of confinement there.

Were there any officers there?—There was not a king's officer that I knew on the coast, and there was only one Gentleman at Morea, one Lieutenant Massey, and he died that morning when I was there, there were twenty-one soldiers, freemen and convicts together.

Do you know the proportion between them?—I believe there were five or six freemen, and the rest convicts.

Mr. Attorney General. Where was you at the time of the execution?—I was at Cape Coast.

Mr. Solicitor. How soon after might you go to Morea Fort?—About six or seven months, or thereabouts.

Mr. Attorney General. Call Job Cooper before this witness goes.

Mr. Attorney General. Are not you the gentleman that took Cooper to a public house?

house?—I saw him there; I happened to go there to meet Maples and Coupland; they were in one room, and Cooper and the rest of the men were in another room.

Did not you ask him then, whether he recollected this conversation that passed between you and him?—I believe I did speak something of it, perhaps I did; that is about two days ago.

Do you mean to swear, that Cooper at that time told you that he heard him say he had got a brace of pistols, and if that would not do, the other had a sword?—I swear he did say so then, and I did not ask him the question two days ago, but I asked him if he remembered what he said at Morea; says he, I will tell you that when I come into Court.

Did not he tell you at the time what you have now told, did he tell you any of the particulars?—He did not, he had not time, because I was in a hurry, I could not stop to speak to him.

Did not you go to examine him on the part of Captain Mackenzie, to know what he could say?—I did not indeed, I went to look for Maples and Coupland, they were Captain Mackenzie's witnesses, and Cooper came and shook hands with me, and I said to him, do not you remember what passed at Morea; then I went back to the parlour, and we had some punch, Coupland, Maples, and us, there was no attorney with me.

Did nobody examine Cooper?—Not in the public house.

Was he examined any where else by this attorney?—I did not employ any attorney, nor I did not ask Cooper to go to any attorney, I saw him at Mr. Dagge's house. He said he would stand true to what he knew, I do not know what he said to Mr. Dagge.

Did not you remind him of it yourself?—I believe I did.

What did he say?—He told Mr. Dagge, as far as I can understand or remember, that he would tell every thing he knew, he said he would remember as far as he could,

and tell every word, he said no more; the question about the sword and the pistol was mentioned to him, but I did not hear his answer.

Cross-examined by Mr. Silvester.
What are you?—A private trader to the coast of Africa when I am there.

Belloc: Job Cooper called up again.

Mr. Lee. Now Cooper, the question I ask you is this, you know Mr. Monro, as you said: what was it you said to Mr. Monro that you overheard?—The words were these, Sir, I told him I was lying on a mat, and I came out of the door into the arch-way, and I heard him say these words, *now is the time; I will do him out and out.*

Did you ever say to him, that Murray said, damn him, I have a brace of pistols, and that Andrews said, if they will not do for him, I have a sword?—No, Sir, I never said such a word to Mr. Monro; to the best of my remembrance I never did.

Did you ever hear any such words delivered while you was at Morea?—Not about the pistols I did not, but I heard him say, *damn him, I will do him out and out.*

Did you ever hear Andrews say to Murray, or Murray to Andrews, I have a brace of pistols, and if they will not do for him, I have a sword, or any thing like that?—To the best of my knowledge I did not.

Then you could not tell him that you had heard them?—I never did tell him so, nor ever heard such words to the best of my knowledge.

It is but two days ago that you met him at this White Horse; had you any conversation there relative to these words, or any of them?—He said to me, do you remember what you said to me at Fort Morea; I said, yes, I do, vastly well.

But he says, you told him at Fort Morea, that Murray said, I have a brace of pistols, and if they will not do for him, I have a sword?—I do not recollect ever saying any thing about them.

Are not you quite sure that you never heard

heard any such thing?—I never heard any such thing about the pistols, but I heard the other words.

Mr. Silvester. Did you see Mr. Monro at Morea Fort?—Yes.

Do you mean to say that you remember every thing that was said?—My memory is really so bad, I have had the fever in my head; what I told him then was truth, but it is so long since, that I cannot recollect, as my memory is so bad, but I could have told him then.

Mr. Silvester to Monro. Did these words pass at Morea that you have mentioned?—They did, upon the oath I have taken before God.

SERGEANT COUPLAND sworn.

Mr. Adam. You served at Fort Morea?—I did.

Did you know the deceased Murray Mackenzie?—I did.

Did you embark on board a ship at Portsmouth and elsewhere?—Yes.

Was you privy to any conspiracy formed by Murray?—I was not.

Was you at Fort Morea at the time Murray escaped?—I was, I was sent out after him to bring him back; I searched for him in Black Town, and there I could not find him.

Do you know the situation of the fort at that time, with respect to the number of men?—Some were well, and some were sick.

Had you overheard any conversation that tended to mutiny, or any thing else?—I did not.

Do you know any attempt of Murray Mackenzie of your own knowledge, or otherwise, against the life of the prisoner?—I heard of it after the execution.

Mr. Silvester. What was the opinion of the garrison with respect to the conduct of Captain Mackenzie?—They all approved of Captain Mackenzie's conduct in shooting the deceased.

How do you know that?—Because they signed a paper. *(The paper shown him.)*

There is my name at the top, it is my own hand writing, it was signed just before Captain Mackenzie went on board the Rotterdam; I was not there when it was signed.

Court. It can be of no evidence.

Was he in custody then?—He was.

Alderman Watson. When was Murray dismissed from his employment of Adjutant?—Before his deserting, he never acted afterwards.

Court. You see at this time he was under a sort of an arrest, he was a prisoner at large.

Prisoner. After his first desertion he was sent to Fort Cormantine, but he deserted three times in the whole.

THOMAS MAPLES sworn.

Examined by Mr. Silvester.

I was Adjutant at Fort Morea, I knew Murray Mackenzie, I lived in the same room with Serjeant Murray, and he wished many times to desert and go to the mines, and wanted me and most of the people to go with him; the mines is a Dutch fort; he frequently asked me to go with him, he said there was a gentleman at Cape Coast that would give us an exceeding good character, and I should go there as a writer.

Court. How long was this before his being shot?—It was before his second desertion.

Did you hear him make any declarations when he was a prisoner at large?—Yes, after he deserted from Cormantine, he came up to Cape Coast, Captain Mackenzie frequently told him to go back to his fort, he would not, he had lodgings in Cape Coast Town, and I went several times to tell him to go down to Morea, he would not go; Captain Mackenzie ordered me and four men to take him down a prisoner, I took him down, and I heard him say he would destroy the prisoner at the bar, he said so at Morea, in the same room I lived in.

How long was this declaration before he was shot?—Two or three days.

Had he made any other declaration in regard

gard of delivering up the fort or any thing? — He wanted every man to desert out of the fort.

Did he say he wished or meant to destroy him? — He has frequently said he would destroy Captain Mackenzie if he could conveniently.

What other declarations did you hear him make; had he made any propositions to go to the Dutch settlement? — Yes, Sir, he had, he had taken all his clothes out of his chest, and given them to the black man that came in and out of the fort, he was to take them to a Dutch settlement; I have heard him apply to Andrews who is dead, and many a time he has desired me to acquaint the men, to let them know that he wished to go, and he would do something for them there.

Mr. Attorney General. How did you go there? — As a soldier in the Mackarel transport; I was sent there one of the convicts.

How long after you had heard this attempt to get away, and this conversation, was it you told Captain Mackenzie? — A short time.

You did not acquaint Captain Mackenzie with it before the execution? — No.

How came you not to do that? — I persuaded this Murray not to desert; I begged of him not; I never acquainted Captain Mackenzie of it till after his execution.

You had once carried him down a prisoner? — Yes.

Could not you have carried him a prisoner to Cape Coast Castle that day, and delivered him up, if necessary? — I could have gone with him.

Mr. Silvester. Was any application made to you, or the rest of the Serjeants and the soldiers, about their opinion of the matter at the time? — Not that I recollect.

Court. You say he had sent all his clothes into Black Town, how do you know that?

— Perfectly well, being in the same room with him; he sent all his clothes.

Then how came his regimentals to be

NUMB. II. PART I.

left in his room immediately before his execution?

Mr. Attorney General. Was it his own coat or another man's coat he was shot in? — I was below, I was confined in the slave hole; I believe Captain Mackenzie thought I was going to desert; Murray Mackenzie went off the next morning.

Prisoner. I believe I can explain that in one word, the blacks who carried off Murray Mackenzie's clothes, and the other clothes, came and gave me the information of the mutiny and desertion, and if it had not been for that, I should not have been here to day.

GENERAL TOWNSEND *sworn.*

Mr. Silvester. How long have you known Captain Mackenzie, Sir? — About eight or nine months before he embarked for Africa, his character whilst under my command was very unexceptionable.

Court. Was he in the same regiment? — No, the company was raised a volunteer company by Captain Mackenzie, I drafted privates from his company, and incorporated them with other corps, his company was chiefly made out of those convicts, owing to the necessity of the service, and also another company; the ship remained in the river for some time, and he made me constant reports of the manner of his command, which were very much to my satisfaction; I have every reason to think he behaved himself very well on board, it was a very desperate crew as ever any man had to deal with.

CAPTAIN LANE *sworn.*

I have known Captain Mackenzie between six and eight months, he was under my immediate command at Chatham barracks, he was sent down by General Townsend's order to me, to be under my command, where he remained for six months; four months after that, I established that company, during which time he behaved perfectly well and satisfactorily to me, and doing his duty as an officer.

WERE

Were you on board this ship?—I was repeatedly, I saw his conduct there, I sent him some powder and ball, in order to keep peace on board the ship.

Court. Was it not a very desperate crew?—It was the opinion of every one of the officers, that there never was a more desperate set of men: I often mentioned that to General Townshend, that it was my opinion, they would not let Captain Mackenzie go to Africa, General Townshend ordered a sufficient number to complete the company that were to be embarked.

Mr. Silvester. My Lord, after the evidence of General Townshend and Captain Lane, I shall not trouble your Lordship with any more witnesses.

Court. Gentlemen of the Jury, Kenith Mackenzie, Esq; is indicted, for that he on the 4th of August, 1783, at Fort Morea, on the coast of Africa, in parts beyond the seas without England, feloniously made an assault on Kenith Murray Mackenzie, and by fixing him to the mouth of a cannon, was the cause of his death:—by the act of parliament of the 33d of Henry the Eighth, a power is given to try this offence by special Commission: Gentlemen, in summing up the evidence to you, I shall omit the testimony of John Jones the first witness, for this reason, because his evidence is excepted to on several particulars, and because I did not admit them to prove he was not in the fort, and because the fact of shooting is proved beyond a doubt, by the rest of the witnesses; I shall begin with the evidence of the other witnesses, the first is John Mortimer (*Here the learned Judge summed up the evidence on both sides, and then added*) I think it is highly probable, that the account of Job Cooper, which he gave to the Captain two days before the fact was done, is true—

Prisoner. My Lord, there are two of the evidences against me, I think it was the 4th of September last, they came up from Portsmouth as they told me; they came into Newgate, into the room where I was, and frightened me, or attempted to frighten me, and bully me, and told me if I did not give

them a hundred pounds apiece, there was Cooper for one, and Mortimer for another, I wish to tell what was really the case, at that time there was no person in the prison, that I could immediately get to hear them; I was perfectly unhappy in my own mind, but upon going to my fellow prisoner, he says, good God, Captain Mackenzie, what wretches were those that have been with you? he says, Almighty God! what people or evidences must they be, thus to express themselves; the words of Mortimer to me were, might he be damned, and might God damn him, if he did not hang me unless I gave him a hundred pounds: there is a gentleman present, a fellow prisoner, a man that was rather unfortunate, in falling into a matter of small consequence, which was attempting to go to France, to acquire a better fortune than he could in his own country, he overheard it; and another gentleman who happened to fall in, one Mr. Philpot saw the men, and can swear to them; and in a word, it would be a satisfaction to this Court and the Jury, that those two gentlemen should be examined, they are both here.

Mr. Attorney General. Who are these witnesses?

Prisoner. One of the Gentlemen is a clerk in the sick and hurt office, I had not the most distant idea that my trial was closing, or I should have mentioned it before.

Court. The most material evidence for you is Cooper.

HUMPHRY BUSTLE sworn.

I am clerk in the sick and wounded office, I have frequently visited Captain Mackenzie the prisoner at the bar, and another person confined in Newgate, for two or three months past; one evening in particular, the beginning of August, as I was sitting with Captain Mackenzie and Mr. Philpot, the servant came in and informed him, two persons wanted to speak to him, Mr. Philpot went out after Captain Mackenzie, in a little while after I went into the yard, to which the prisoners confined to the rooms in which Captain Mackenzie was have access; I had taken a few turns

in the yard and the Captain came out with men who soon parted with him; I perceived the prisoner rather agitated, I asked him the reason.

What had you heard these two men say to the prisoner?—I did not hear them say any thing, I heard a noise as I was passing the Captain's window.

Prisoner. Mr. Philpot was the witness that heard them, this gentleman only can identify the people.

Mr. Silvester. Can you identify the people?—I cannot say I can, I do not recollect the persons of either of them.

FRANCIS PHILPOT *sworn.*

Mr. Silvester. Was you present with Mr. Mackenzie at any time when two men came to him?—Yes.

Do you know these two men?—I should know one, I believe one was taller than the other, but my sight is bad.

Look at that man Mortimer?—I believe this man was in yesterday with Captain Mackenzie.

Jury to Mortimer. Was you the person yesterday?—I will tell you what a Gentleman, Mr. Burke, told me, Captain Mackenzie wanted to speak to me, he gave me his coat to put on, and I went in and spoke to him, but nothing more passed, so help me Jesus God; I have never received any money, Captain Mackenzie says to me, he says, Mortimer, says he, I want you for one thing, how much money will do for you? says I, I shall not be off Captain Mackenzie, if you will give me a hundred pounds I will take it, but I will speak the truth afterwards; Mr. Lutwyche took me to him, he lives at No. 14, in New Inn, and he lent me his great coat, I went in with my own cloaths, and put on that to come out.

Prisoner. I beg that Mr. Philpot may explain what words passed between that young man and me, I wish the truth to appear to this Court in the purest light.

Mr. Silvester. Did you see that man with the spectacles on?—I do not know, I saw him yesterday, he came in, and we

drank a pot of beer together, and Captain Mackenzie said to Philpot, Sir, I should like to speak to Mortimer.

Mr. Philpot. Oh fie! fie! fie! he came in, and Captain Mackenzie had his barber dressing his hair; he says Mortimer, well, how do they go on at Portsmouth? why, says he, I have led a hell of a life amongst them, they do nothing but abuse me, they say that I was no further than Farnham, I never let them know I came up to London; Captain Mackenzie never mentioned a word about giving him money in September; this man as I believe, I heard this man swear, that if he did not give him money, by God he would hang him; one Cooper was with him.

Prisoner. This is truth, or may I never have any existence here, or hereafter.

Mortimer. Here I am, and as I am a sinner to Almighty God, Sir, here I am; I told him if he gave it me, well and good, I said I would speak the truth; he said he would get it up for me ready, and his brother was the man that came down to Portsmouth, and fetched me up, and an attorney, they made us both drunk, and brought us both here, and I never knew where I was, till they brought me into Newgate.

Mr. Attorney General. Where do you lodge?—At the White Horse.

JOHN PATTEN *sworn.*

I went to dress Captain Mackenzie's hair yesterday morning, there was Mr. Philpot and the witness Mortimer in the room, this man here; Mr. Mackenzie asked Mortimer how they went on, he said he led a damned life amongst them, that they thought he had a share of the money.

Mr. Silvester. Was any offer made by Captain Mackenzie?—No.

Court. Gentlemen of the Jury, if you believe Mortimer and Cooper, whose evidence is not materially impeached—

Prisoner. I beg to intercede, Mr. King and another man is here, and will prove that John Jones was on board a ship when he swore he was at Fort Morea.

Court.

Court. That is not material, as I do not
 sum up his evidence.—You see, Gentle-
 men, Murray Mackenzie was executed by
 order of the prisoner, in the manner that
 has been described; therefore, of the fact
 of his giving directions for his execution
 there is no doubt: there will therefore, be
 two points for your consideration, how far
 those orders of Captain Mackenzie for the
 execution of Murray Mackenzie, can either
 be justified or excused; and I can find but
 two grounds upon which he can put his
 defence; either this was an execution agree-
 able to martial law, and therefore that he
 was justified; or that it was an execution
 necessary for his own defence, and for the
 protection of his Majesty's fort and garri-
 son, that were there; as for the first part of
 the defence, I do not see it possible to jus-
 tify his conduct by martial law, I do not
 know, that the life of any one can be taken
 away by martial law, except in the heat of
 action; but by a Court Martial being held
 on him; it is said here, that there was no
 opportunity of holding a Court Martial,
 and that the single officer was the prisoner,
 but it is also proved, if you should doubt
 that the slaves hole was not sufficiently se-
 cure, yet there was a sufficient prison at
 Cape Coast, where he might be secured, he
 might have been afterwards tried or sent
 home in irons, in order to be duly tried ac-
 cording to martial law; but even supposing
 you should think that such a power was
 lodged in this single officer, that he had a
 power himself to sentence him, yet in this
 power he has not observed one legal step
 that he ought to have taken; the man was
 never summoned, nor suffered to make any
 defence; he was immediately tied to the
 mouth of a cannon, and though we may have
 heard of such a kind of punishment in Asia,
 I am afraid it will not be warrantted by any
 law existing in this country; this was a
 power which he exercised without permit-
 ting the man to be heard; I should have
 thought if a Court Martial duly constitu-
 ed had assumed such a power, it could not

be justified, for Court Martials, though
 their power is greater than other Courts,
 they never condemn a person un-
 heard therefore he cannot justify himself
 by the martial law, because he has not ob-
 served one single requisite necessary to jus-
 tify him, there was no Court Martial; there
 was a prison where he might have been kept;
 therefore, with respect to that part of the
 conduct of the prisoner, it deserves a severe
 condemnation: the other part of his de-
 fence has more probability in it; and that
 is, that this act of his was necessary for his
 self-defence, and for the protection of his
 person and the safety of the garrison; if you
 think that is true, it may in some degree
 justify the act itself; his situation is this, a
 most desperate crew he certainly had, his
 garrison consisted of twenty-one, and at the
 time of the execution it consisted of more;
 his crew consisted of sixty desperate con-
 victs, and five freemen and volunteers;
 and in the account you have from General
 Townsend and Captain Lane, they both
 agree, there never was a more desperate set
 of fellows, and that it was even thought the
 prisoner would never be able to compleat
 the voyage to Africa: that there was a com-
 bination amongst these men to do the pri-
 soner, or to do him out and out, is proved
 by three witnesses; but then the communi-
 cation of this fact to the prisoner is only
 proved by Job Cooper, and he says he did
 give information to Captain Mackenzie, that
 Andrews and Murray had said, they would
 do him out and out; and if you be-
 lieve what Monro says, that evidence is
 carried a little farther; he says that Mur-
 ray Mackenzie should say to Andrews,
 damn him, I have a brace of pistols that
 should do him, and that the other said, I
 have a sword: this was a kind of alarm,
 which might have an effect on a man of
 courage and constancy, when he saw an in-
 tention to take away his life. I will put a
 case, which might have happened something
 like the present: supposing this Captain,
 sailing to the coast of Africa, had heard of

an insurrection amongst the slaves, and one of them, more desperate than the rest, had threatened to take away his life; if he had sent for the man up, and if upon deck he had taken a pistol and shot him, perhaps it would have been thought self-defence; therefore, that is the only ground upon which you can acquit the prisoner. The act itself has the appearance of a very severe punishment, but it is, perhaps, the most easy punishment of death that is possible, as the mortal frame is dissolved in a moment. I have given my opinion in point of law, that this is an act which cannot possibly be justified by martial law, and that the only excuse of the prisoner is, whether you think the act he did was absolutely necessary for his self-defence; if you find him guilty, I am afraid he must be guilty of the murder, you cannot find him guilty of a less crime.

Prisoner. My Lord, and Gentlemen of the Jury——

Court. You must certainly conform yourself to the laws of your country.

Prisoner. I take leave to ask pardon of this Court, it was from a perfect ignorance or I should not have done it.

Court. Gentlemen, you see there were two witnesses proved declarations communicated to the Captain afterwards, that they intended to take away his life, but these were not communicated previous to the execution of Murray Mackenzie.

The Jury retired for near two hours and returned with a verdict.

GUILTY of the wilful Murder :

But in consideration of the desperate crew the Captain had to command, we wish to recommend him to his Majesty's mercy.

Edward Reynolds, Esq; Clerk of the Arraignment, then addressed the Prisoner as follows :

Captain Kenith Mackenzie, you stand convicted of wilful murder, what have you
NUMB. I. PART I.

to say why this Court should not give you judgment to die according to law?

Proclamation being made, Mr. Recorder passed sentence as follows:

Kenith Mackenzie, you have been, after a trial conducted with the utmost patience and indulgence, convicted of the crime of Wilful murder! a crime of the greatest magnitude that is known to the law! a crime for which the laws of all civilized countries have thought it necessary to inflict the punishment of death: the law of God, as well as the law of man, decides, that whoso wilfully and maliciously sheddeth man's blood, by man shall his blood be shed! You have availed yourself of the authority with which you were invested, as an officer in his Majesty's service, by a new and extraordinary execution, to deprive an unfortunate man of his life; you have done it under circumstances, that clearly can derive no justification from any authority with which you were invested, and the manner of it bears no resemblance to the just exercise of any lawful authority, and the laws of this country have intrusted the power of life in the hands of no one man whatever: you have taken upon yourself to do that, which even your Royal Master could not lawfully have done; for you have, of your ownself, without a trial, and without a hearing, by a violent and hasty order, in a most new and unprecedented manner, hurried an unfortunate wretch into eternity, untried, unheard, and unprepared: the circumstances under which this crime was committed were such, as have not appeared, in the eyes of a very attentive and merciful Jury, sufficient to justify your defence, under the idea of its being a necessary act for the preservation of yourself, and the others under your command; that point has been fully left to your Jury, and they by their verdict have decided upon it; it therefore can only remain for me to pronounce upon you the

sentence of the law. The sentence of the law is, and this Court doth adjudge, that you, Kenith Mackenzie, be hanged by the neck until you are dead, and afterwards

your body be dissected and anatomized, according to the statute, and the Lord have mercy upon your soul!

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